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FISCAL IMPACT REPORT

ORIGINAL DATE 1/25/07

SPONSOR Komadina LAST UPDATED _____ HB _____

SHORT TITLE Transitional Support for Foster Youth SB 48

ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	\$1,200.0	\$2,400.0	\$2,400.0	\$6,000.0	Recurring	General Fund

SOURCES OF INFORMATION

LFC Files

Responses Received From

Children, Youth and Families Department (CYFD)
Public Education Department (PED)

SUMMARY

Senate Bill 48 amends the New Mexico Children’s Code to narrow the definitions of physical abuse, sexual abuse and sexual exploitation, provide for transitional living services for youth in Department custody and shift the responsibility for Next-Step Plans that required by NMSA 22-13-1.1 from the schools to CYFD for children in foster care. These provisions would mandate the development and court review of an education plan for youth who are 14 years of age or older, create a provision for transition plan for youth reaching 17 years of age and create a new category of services and establish a new category of eligibility for a population of young adults currently not covered in the Children’s Code. The target population established by this bill is estimated between 100 and 300 young adults.

The first new provisions are in subsections 32A-4-2 (F), (G) and (H). Here the bill narrows the definitions of physical abuse, sexual abuse and sexual exploitation by limiting such findings to only those specific conditions and/or circumstance listed.

The second new provision is in subsection 32A-4-25.1. (G). It would mandate CYFD assume the responsibility for the development of an education plan for youth prior to their fourteenth birthday. The “next-step” plan is currently required by NMSA 22-13-1.1 for all New Mexico students and is the responsibility of the local schools and school boards. The requirements for the plan are expanded to include provisions that it would be based on an individualized assessment of the youth’s educational needs and would be subject to court approval and revision if necessary. It would become a court ordered plan once approved by the youth or ordered by the court after its review of any contested issues. The educational next-step plan would be reviewed at every subsequent permanency hearing after the youth reaches the age of 14.

The third new provision is subsection 32A-4-25.1(H). It mandates what is generically referred to as a ‘benchmark hearing.’ This hearing would occur at the permanency hearing before the youth turns 17. At this permanency hearing the court would advise the youth of the latter’s eligibility for transitional living services and a transition living plan.

The above-mentioned revisions to the Children’s Code lay the foundation for an entirely new section in the Children’s Code. The new Section 3 defines transitional living services and transition living plan. The domains of housing, education, employment, health, and mental health would be addressed in the transition plan. This plan would be decided upon by the youth and be reasonably calculated to increase independent living skills that will enable the youth to become as self-sufficient as possible.

Both the education plan and the transition living plan would be subject to court review and revision. These plans would become part of the court’s order for the youth and be subject to periodic judicial review. The 17 year old would also have the right to a special hearing for the enforcement or modification of the plan.

The transition planning process would mandate the Department convene a meeting at least 90 days prior to the youth’s 18 birthday. The purpose would be to review the sufficiency of the services being offered to the young person.

FISCAL IMPLICATIONS

There is no appropriation associated with this bill.

The fiscal study done by the committee considered the costs of CYFD employees. The study assumed approximately 180 foster care youth age out of the system on a yearly basis. It also assumed half of these emancipating youth will opt for court jurisdiction. Calculations centered on the costs to the Department of hiring new employees and training them, along with administrative support to serve this population over a five year period. To adequately serve this new population of youth at the level implied in this bill, CYFD could potentially need as many as 25 to 30 additional FTE. These FTEs would be front line workers, supervisors and Children’s Court Attorneys. Assuming a flat average rate of \$54,120 annual salary and benefits cost per FTE, CYFD would require an additional \$1,353,000 to \$1,623,600. As these FTE would be serving youth over the age of 18, the State would not be able to claim any federal match to support their positions/efforts. This figure does not include the fiscal resources that would be required to administratively support and provide the overhead necessary to support these positions. Estimating 1.75% additional cost per FTE raises the total to between \$2.4 million and \$2.9 million.

Additional cost would also include foster care maintenance for youth beyond their 18th birthday. Assuming half of the emancipating youth would remain and assuming the current foster care maintenance rate of approximately \$470.00 a month, an additional \$1.1 million would be required annually. As youth over the age of 18 are not eligible for Title IV-E funds and other available federal funding to serve this population is limited, the majority of this specific cost would be borne by the State.

These fiscal implications do not include an analysis of the additional cost to the courts that would result with the increased requirements and caseload.

The risk involved in this bill includes the potential for much larger sums should there be court orders requiring indefinite jurisdiction and the costs associated with housing and providing health care and educational services that devolve onto the Department given the narrow focus on case management responsibilities contained in the bill.

Implementation of court ordered transitional living services will require more court time, therefore more agency time and the costs that attach to this functionality. The bill would impose requirements that are not budgeted, require substantial recruitment efforts, training and staff time. Court time is not calculated solely on the actual duration of a legal hearing, but on preparation, presentation, and the unavoidable delays accompanying busy court dockets.

SIGNIFICANT ISSUES

The bill significantly narrows the definition of physical abuse, sexual abuse, and sexual exploitation thereby limiting the State's ability to protect vulnerable children.

The bill transfers responsibility for educational planning from the schools to CYFD and creates additional requirements for the schools in terms of court ordered reviews of the next step plan currently required by NMSA 22-13-1.1.

Related to educational planning, PED states:

- This change in the Children's Code would require those youth who are involved in a transitional living plan to also receive a transitional education plan within the presiding court. The planning meeting must include participation by the child, surrogate parent, appointed pursuant to the federal Individuals With Disabilities Education Act or other educational decision-maker recognized by the child's school district, the child's court attorney and staff from the child's school to develop an educational next-step plan.
- The proposed language on page 10, lines 1 thru 11, would also give authority to the presiding court to review, approve and either adopt or order the department to convene another planning meeting to revise the educational plan. The educational plan will be reviewed at every subsequent permanency hearing. This process could be time consuming and cumbersome for all parties.
- The federal IDEA law and New Mexico state rules require that students that qualify for special education services follow an Individual Education Plan (IEP). Adding an education component to a transitional living plan may duplicate/interfere with a student's current IEP (see Technical Issues below).
- Lines 5 through 9 on page 10 violate the IDEA. The student's IEP must be developed by the IEP team. Allowing a judge to overrule the IEP would be considered as a unilateral placement.

The bill would place the burden solely upon CYFD to ensure successful transition planning beyond age 18 unless the youth satisfies the court that waiver of the right to transitional living services is knowing and voluntary. CYFD does not have the resources or responsibility for services to adults in New Mexico. There is no provision in this bill that addresses at what age the court loses jurisdiction over the young adult who chooses not to waive these services. This open-ended jurisdiction could conceivably entitle a young adult to an interminable case at CYFD and

judicial expense.

The bill does not address the inherent limitations of CYFD's efforts to obtain housing for young adults. The language and structure of the bill permits the legal argument that young adults could be ordered to remain in foster homes absent available housing in their local communities. The language of the bill states that the planning and decision-making would be youth driven, but the provision for unlimited court jurisdiction and the potential for court orders involving placement issues and payments for health care costs, calls into question whether this bill extends court jurisdiction or if it could be used to extend foster care and costs attendant to the care of abused and neglected children.

A critical issue involved in case management for young adults who do not qualify for funded waiver programs would probably constitute the population of young adults with the greatest needs in terms of self-sufficiency and capacity for independent living. This population consists of young persons who are challenged emotionally, psychologically and sometimes physically, but who do not meet stringent program requirements of other state agencies offering services to young adults.

This multi-challenged population needs a service array that currently is lacking throughout most of New Mexico. The consequence of a deficient service array for this sector of at risk young adults will pose a challenge for the courts. The bill uses best interests' standards that will put the courts in the position of determining whether the documented efforts of the Department are sufficient in a resource scarce environment. The bill puts this burden solely on the Department when the Department's expertise does not include case management provision for young adults whose needs must be addressed by other state agencies.

PERFORMANCE IMPLICATIONS

CYFD states that the impact of potentially increased caseloads over an indefinite period of time could result in increased staff turnover, and a dilution of average time, focus, and expertise able to be dedicated to individual cases.

ADMINISTRATIVE IMPLICATIONS

If passed, the bill will have an administrative impact on children, youth and families department that the bill does not address. CYFD has estimated the additional administrative cost to be \$2.4 million each year.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None identified.

TECHNICAL ISSUES

The bill uses the term "child" or "children" when referring to adolescents as well as to those young adults who would become eligible for transitional living services. This term is not technically applicable when referring to young persons who have legally emancipated and whose consent to services must first be obtained.

The bill also appears to address the use of gender-neutral language and replaces words previously adopted by the legislature. The definition of physical abuse, sexual abuse and sexual exploitation in the Children's Code is determined by reference to the criminal definitions and changing the existing language may give rise to the unintended consequence of limiting the applicability of the criminal definition by deleting the phrase "including but limited to" to one that defines sexual abuse in the Children's Code to one that only "includes" the criteria defined.

OTHER SUBSTANTIVE ISSUES

It is anticipated that many of the young adults who will choose to remain under the jurisdiction of the court will have challenges that do not meet criteria for waiver assistance programs but still need considerable assistance in transitioning to adult living. This bill does not address the responsibilities of other state agencies to join together in meeting the challenge of at risk young adults. The Department of Health and the Public Education Department and their roles in addressing issues affecting this population are not addressed.

This bill was submitted to a New Mexico Supreme Court constituted Court Improvement Project (CIP) Task Force for consideration in the late fall of 2006. It was considered and debated at length in both the larger Task Force addressing the needs of New Mexico youth as well as in the duly designated CIP committee. This CIP group ultimately voted unanimously, with the author of the bill abstaining, against adopting it for legislative consideration during the 2007 Legislative Session. A Supreme Court Justice informed the committee that the Supreme Court had already submitted its budget for the 2007 Legislative Session and would not be supporting this bill.

Youth involved in meetings where this bill was discussed declined to endorse it. The youth emancipating from Department custody clearly stated to Task Force participants that they want a youth driven process that does not have to include extended court jurisdiction at this point in time.

ALTERNATIVES

The 'benchmark hearing' designated in this bill can occur without the need for a statutory amendment. Permanency hearings are statutorily mandated and children's court judges can hold this type of hearing and require the same types of services and planning without the need for legislative enactment.

The Department has already initiated internal systemic changes designed to improve delivery of voluntary case management services to this population of young adults emancipating from foster care. The CIP committee assigned the task of designing a comprehensive package of systemic changes is working collaboratively with the Department to address these issues.